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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

13 ISRAEL PACHECO, an individual,

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15 Plaintiff,

16 v.

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18 LOWE'S HOME CENTERS, LLC, a  
19 North Carolina limited liability company;  
20 and DOES 1 through 20, inclusive,

21 Defendant.  
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Case No: 2:17-cv-04991-RSWL-JC

**PROTECTIVE ORDER**

Discovery Document: Referred to  
Magistrate Judge Jacqueline Chooljian

[CHANGES MADE BY COURT]

First Amended Complaint filed: August  
28, 2017

**PROTECTIVE ORDER**

Pursuant to the stipulation by the Parties and good cause appearing therefor, the Court HEREBY ENTERS the Parties' STIPULATED PROTECTIVE ORDER as **modified**, the pertinent elements of which are as follows:

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential information under seal. Rather, when the parties seek permission from the court to file material under seal, the parties must comply with Civil Local Rule 79-5 and with any pertinent orders of the assigned District Judge and Magistrate Judge.

B. GOOD CAUSE STATEMENT

The parties have represented that this action is likely to involve the production of confidential personnel file documents of disinterested third parties who are not parties to this action; internal investigation documents relating to Defendant's employees and operations; non-public, proprietary, commercially sensitive, and trade secret information, the disclosure of which carries the danger of compromising Defendant's competitive business interests; proprietary information relating to Defendant's business practices and procedures for the operation of its retail facilities that may be of value to a competitor or may cause harm to Defendant's legitimate business interests in the marketplace; customer names and addresses; and non-public

information concerning Plaintiff and non-parties that is personal in nature and/or protected by the right of privacy. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in connection with this action, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. The parties shall not designate any information/documents as confidential solely for tactical reasons or without a good faith belief that such information/documents have been maintained in a confidential, non-public manner, and that there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1. Action: *Israel Pacheco v. Lowe's Home Centers, LLC*, Case No: 2:17-cv-04991-RSWL-JC, pending in the United States District Court for the Central District of California.

2.2. Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3. "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5. Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

1           2.6. Disclosure or Discovery Material: all items or information, regardless of  
2 the medium or manner in which it is generated, stored, or maintained (including,  
3 among other things, testimony, transcripts, and tangible things), that are produced or  
4 generated in disclosures or responses to discovery in this matter.

5           2.7. Expert: a person with specialized knowledge or experience in a matter  
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
7 expert witness or as a consultant in this Action.

8           2.8. House Counsel: attorneys who are employees of a party to this Action.  
9 House Counsel does not include Outside Counsel of Record or any other outside  
10 counsel.

11           2.9. Non-Party: any natural person, partnership, corporation, association, or  
12 other legal entity not named as a Party to this action.

13           2.10. Outside Counsel of Record: attorneys who are not employees of a party  
14 to this Action but are retained to represent or advise a party to this Action and have  
15 appeared in this Action on behalf of that party or are affiliated with a law firm which  
16 has appeared on behalf of that party, and includes support staff.

17           2.11. Party: any party to this Action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their  
19 support staffs).

20           2.12. Producing Party: a Party or Non-Party that produces Disclosure or  
21 Discovery Material in this Action.

22           2.13. Professional Vendors: persons or entities that provide litigation support  
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
25 and their employees and subcontractors.

26           2.14. Protected Material: any Disclosure or Discovery Material that is  
27 designated as "CONFIDENTIAL."  
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2.15. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any deposition testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material, other than during a court hearing or at trial.

Any use of Protected Material during a court hearing or at trial shall be governed by the orders of the presiding judge. This Order does not govern the use of Protected Material during a court hearing or at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restraint and Care in Designating Material for Protection.  
Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that

1 qualify so that other portions of the material, documents, items, or communications  
2 for which protection is not warranted are not swept unjustifiably within the ambit of  
3 this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations  
5 that are shown to be clearly unjustified or that have been made for an improper  
6 purpose (e.g., to unnecessarily encumber the case development process or to impose  
7 unnecessary expenses and burdens on other parties) may expose the Designating Party  
8 to sanctions.

9 If it comes to a Designating Party's attention that information or items that it  
10 designated for protection do not qualify for protection, that Designating Party must  
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2. Manner and Timing of Designations. Except as otherwise provided in  
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
15 under this Order must be clearly so designated before the material is disclosed or  
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic  
19 documents, but excluding transcripts of depositions or other pretrial or trial  
20 proceedings), that the Producing Party affix at a minimum, the legend  
21 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
22 contains protected material. If only a portion or portions of the material on a page  
23 qualifies for protection, the Producing Party also must clearly identify the protected  
24 portion(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents available for inspection  
26 need not designate them for protection until after the inspecting Party has indicated  
27 which documents it would like copied and produced. During the inspection and before  
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1 the designation, all of the material made available for inspection shall be deemed  
2 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
3 copied and produced, the Producing Party must determine which documents, or  
4 portions thereof, qualify for protection under this Order. Then, before producing the  
5 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”  
6 to each page that contains Protected Material. If only a portion or portions of the  
7 material on a page qualifies for protection, the Producing Party also must clearly  
8 identify the protected portion(s) (e.g., by making appropriate markings in the  
9 margins).

10 (b) for testimony given in depositions that the Designating Party  
11 identify the Disclosure or Discovery Material on the record, before the close of the  
12 deposition all protected testimony.

13 (c) for information produced in some form other than documentary  
14 and for any other tangible items, that the Producing Party affix in a prominent place  
15 on the exterior of the container or containers in which the information is stored the  
16 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants  
17 protection, the Producing Party, to the extent practicable, shall identify the protected  
18 portion(s).

19 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
20 failure to designate qualified information or items does not, standing alone, waive the  
21 Designating Party’s right to secure protection under this Order for such material.  
22 Upon timely correction of a designation, the Receiving Party must make reasonable  
23 efforts to assure that the material is treated in accordance with the provisions of this  
24 Order.

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6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:



1 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
2 well as employees of said Outside Counsel of Record to whom it is reasonably  
3 necessary to disclose the information for this Action;

4 (b) the officers, directors, and employees (including House Counsel)  
5 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom  
7 disclosure is reasonably necessary for this Action and who have signed the  
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional  
12 Vendors to whom disclosure is reasonably necessary for this Action and who have  
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or  
15 a custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in  
17 the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
18 party requests that the witness sign the "Acknowledgment and Agreement to Be  
19 Bound" (Exhibit A); and (2) they will not be permitted to keep any confidential  
20 information unless they sign the "Acknowledgment and Agreement to Be Bound"  
21 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.  
22 Pages of transcribed deposition testimony or exhibits to depositions that reveal  
23 Protected Material may be separately bound by the court reporter and may not be  
24 disclosed to anyone except as permitted under this Protective Order; and

25 (i) any mediator or settlement officer, and their supporting personnel,  
26 mutually agreed upon by any of the parties engaged in settlement discussions.  
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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation  
4 that compels disclosure of any information or items designated in this Action as  
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification  
7 shall include a copy of the subpoena or court order unless prohibited by law;

8 (b) promptly notify in writing the party who caused the subpoena or  
9 order to issue in the other litigation that some or all of the material covered by the  
10 subpoena or order is subject to this Protective Order. Such notification shall include a  
11 copy of this Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be  
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with  
15 the subpoena or court order shall not produce any information designated in this  
16 action as “CONFIDENTIAL” before a determination by the court from which the  
17 subpoena or order issued, unless the Party has obtained the Designating Party’s  
18 permission or unless otherwise required by the law or court order. The Designating  
19 Party shall bear the burden and expense of seeking protection in that court of its  
20 confidential material and nothing in these provisions should be construed as  
21 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
22 directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
24 IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by  
26 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
27 produced by Non-Parties in connection with this litigation is protected by the  
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1 remedies and relief provided by this Order. Nothing in these provisions should be  
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request,  
4 to produce a Non-Party's confidential information in its possession, and the Party is  
5 subject to an agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the  
8 Non-Party that some or all of the information requested is subject to a confidentiality  
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the  
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
12 specific description of the information requested; and

13 (3) make the information requested available for inspection by  
14 the Non-Party, if requested.

15 (c) If a Non-Party represented by counsel fails to commence the  
16 process called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving  
17 the notice and accompanying information or fails contemporaneously to notify the  
18 Receiving Party that it has done so, the Receiving Party may produce the Non-Party's  
19 confidential information responsive to the discovery request. If an unrepresented  
20 Non-Party fails to seek a protective order from this court within 14 days of receiving  
21 the notice and accompanying information, the Receiving Party may produce the Non-  
22 Party's confidential information responsive to the discovery request. If the Non-Party  
23 timely seeks a protective order, the Receiving Party shall not produce any information  
24 in its possession or control that is subject to the confidentiality agreement with the  
25 Non-Party before a determination by the court unless otherwise required by the law or  
26 court order. Absent a court order to the contrary, the Non-Party shall bear the burden  
27 and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement into the Protective Order.

12. MISCELLANEOUS

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of the Stipulated Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed

1 in this Protective Order. Similarly, no Party waives any right to object on any ground  
2 to use in evidence of any of the material covered by this Protective Order.

3 12.3. Filing Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
5 only be filed under seal pursuant to a court order authorizing the sealing of the  
6 specific Protected Material at issue. If a Party's request to file Protected Material  
7 under seal is denied by the court, then the Receiving Party may file the information in  
8 the public record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 After the final disposition of this Action, as defined in paragraph 4, within 60  
11 days of a written request by the Designating Party, each Receiving Party must return  
12 all Protected Material to the Producing Party or destroy such material. As used in this  
13 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
14 summaries, and any other format reproducing or capturing any of the Protected  
15 Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
16 must submit a written certification to the Producing Party (and, if not the same person  
17 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
18 category, where appropriate) all the Protected Material that was returned or destroyed  
19 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
20 compilations, summaries or any other format reproducing or capturing any of the  
21 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
22 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
23 legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
24 attorney work product, and consultant and expert work product, even if such materials  
25 contain Protected Material. Any such archival copies that contain or constitute  
26 Protected Material remain subject to this Protective Order as set forth in Section 4  
27 (DURATION).

1 14. Any violation of this Order may be punished by any and all appropriate  
2 measures including, without limitation, contempt proceedings and/or monetary  
3 sanctions.

4 **IT IS SO ORDERED.**

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6 DATED: March 5, 2018

7 /s/ Jacqueline Chooljian  
8 Honorable Jacqueline Chooljian  
9 United States Magistrate Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [full name], of \_\_\_\_\_ [address],  
declare under penalty of perjury that I have read in its entirety and understand the  
Protective Order that was issued on March 5, 2018 by the United States District Court  
for the Central District of California in the case of *Israel Pacheco v. Lowe's Home  
Centers, LLC*, Case No: 2:17-cv-04991-RSWL-JC. I agree to comply with and to be  
bound by all the terms of this Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of  
contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing the terms of this  
Protective Order, even if such enforcement proceedings occur after termination of this  
action. I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] as my  
California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_